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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

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In re E.N., a Person Coming Under the  
Juvenile Court Law.

SACRAMENTO COUNTY DEPARTMENT OF HEALTH  
AND HUMAN SERVICES,

Plaintiff and Respondent,

v.

D.N.,

Defendant and Appellant.

C051897

(Super. Ct. No. JD221356)

Appellant D.N., the mother of E.N. (the minor), appeals from an order of the juvenile court terminating reunification services. (Welf. & Inst. Code, §§ 366.21, subd. (f), 395.)<sup>1</sup> Appellant contends substantial evidence is lacking to support the juvenile court's finding that reasonable services were offered to her.

We find that appellant's claim lacks merit and we therefore affirm the judgment.

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<sup>1</sup> Undesignated section references are to the Welfare and Institutions Code.

### **FACTS AND PROCEDURAL HISTORY**

On October 26, 2004, the Sacramento County Department of Health and Human Services (DHHS) filed a dependency petition<sup>2</sup> regarding the minor. The petition alleged that appellant and the minor's father failed to supervise or protect the minor in that, "upon [the child's] release from Heritage Oaks Hospital, the mother was unable to assume custody of the child, and mother remains unable to manage the child's behaviors." The petition further alleged that the minor had disclosed to his outpatient therapist a desire to stab his mother's boyfriend and to cut off his own penis, and that the minor's aggressive outbursts "have been worsening to the point of the child endangering others and himself."

At the detention hearing, the juvenile court ordered temporary placement and care of the minor with DHHS, and ordered reunification services for appellant and psychological and psychiatric services for the minor.

At the jurisdictional hearing, DHHS submitted a jurisdiction/disposition report recommending that reunification services offered to appellant should include general counseling "to address the issues identified in the Case Plan objectives," a domestic violence program, a psychiatric/psychological evaluation, and psychotropic medication evaluation/monitoring. DHHS also recommended that appellant participate in a parenting

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<sup>2</sup> The petition was subsequently amended on January 10, 2005.

education program and an outpatient substance abuse program, if necessary.

The matter was set for a contested jurisdiction/disposition hearing on January 10, 2005, at which time the court sustained the amended allegations in the petition, adjudged the minor a dependent child of the court, and ordered, among other things, that appellant participate in counseling to address issues of "physical abuse; domestic violence; child-parent conflict; anger control; issues identified in the psychological evaluation; [and] other issues as deemed appropriate by the therapist." Appellant was also ordered to undergo a psychological evaluation to tailor services to her specific circumstances.

In the report prepared for the six-month review hearing, the social worker noted that "mother has not made herself available for face-to-face contact . . . during the duration of the case"; that appellant did not show up for scheduled appointments; and that "mother has made minimal progress in her reunification case plan services." It was also noted that appellant was participating in authorized parenting classes, but refused to participate in urinalysis testing because she did not believe she had an alcohol or drug problem. In the opinion of the social worker, appellant had only "moderately participated in her Case Plan services," and that "[i]ssues such as mother's mental health and drug issues and adequate housing which brought the child into dependency [had] not been [addressed]." DHHS recommended that appellant be granted six additional months of reunification services.

The updated case plan, signed by appellant, reiterated appellant's responsibilities, including general counseling, substance abuse testing and participation in a parenting education program.

At the review hearing on June 24, 2005, the court ordered that appellant submit to a drug test, and referred the minor for a psychological evaluation "conducted by a mental health professional with expertise in gender identity issues."

In July 2005, appellant was evaluated by a psychologist, who concluded that "[c]onsideration of therapy involving Minor with Mother should not occur until she genuinely evidences a more accurate awareness and understanding of the problems Minor is facing." Specifically, the evaluator noted that appellant "must demonstrate the capability to maintain a stable, long-term housing situation along with a viable means of long-term support of Minor." She concluded as follows: "It is to be emphasized that should Mother fail to meet any and all of the reunification requirements, and should she continue to evidence ambivalence, particularly voice continued unawareness of the depth of Minor's problems, then alternative placement for Minor must be considered. It is critical that Mother demonstrate social and financial stability that includes stable housing that appears to be of a long-term nature. If this does not occur within the prescribed time period of the reunification process, alternative placement of Minor must be initiated."

In a progress report dated September 1, 2005, the social worker detailed efforts that had been made to find

a psychologist specializing in gender identity issues to evaluate the minor. According to the social worker, "over two dozen messages" had been left with various providers in Sacramento and Napa Counties, with no response. The social worker was able to refer appellant and the minor to conjoint counseling.

A subsequent progress report dated September 14, 2005, reported that the social worker was eventually able to locate a psychologist with expertise in transgender identity issues, who conducted an evaluation of the minor in that same month.

At a hearing on September 16, 2005, the juvenile court ordered that appellant's case plan be tailored to include counseling by someone with expertise in transgender issues.

In December 2005, DHHS submitted a permanency report chronicling the progress of both appellant and the minor over the prior six months. The report confirmed that the minor was receiving counseling through his residential treatment facility to address, among other things, his gender identity issues and his behavior around others. According to the therapist at that facility, conjoint counseling sessions were scheduled, but appellant failed to show up for the first appointment, and arrived over three hours late for the second, which therefore had to be cancelled. Although appellant was offered bus passes to help defray the cost of transportation to and from the conjoint counseling sessions, she refused. Staff at the facility reported that appellant's contact with the minor had been inconsistent over the prior year and, after every

telephone conversation or physical contact with appellant, the minor exhibited behavioral problems. Staff also informed DHHS that it had "tried everything possible to accommodate the mother in her visits with the child, however, the mother continues to be inconsistent with her visits."

With respect to appellant's progress in reunification, the report noted that appellant had completed individual counseling and parenting classes, but refused to submit to any substance abuse tests despite the fact that she said she had a prior drinking problem.

Based upon what DHHS characterized as minimal compliance with her case plan, refusal to participate in approved substance abuse services, inconsistency in visitation with the minor and failure to address the issues which brought the minor into dependency, and given the minor's adverse behavior following contact with appellant, DHHS recommended termination of reunification services to appellant.

At the section 366.21, subdivision (f) hearing, appellant testified that she had completed the required parenting classes and 13 sessions of counseling, and was in the process of completing her second round of counseling sessions. According to appellant, she would have liked to participate in a more intense parenting class but was "not allowed to do that one," and she had not received the kind of help she wanted with respect to her son's gender identity issues.

Appellant also called a social worker as a witness, who testified that, although conjoint counseling was offered,

appellant "just didn't show up for those visits." The social worker also confirmed that appellant had not participated in substance abuse testing.

The court concluded that, while appellant had participated in reunification services, she had not done so regularly and had "not made substantive progress." The court terminated reunification services for appellant and ordered long-term foster care for the minor.

#### **DISCUSSION**

Appellant contends there is no substantial evidence that she was offered reasonable services so that she could successfully reunify with her son. We disagree.

As a preliminary matter, we reject the respondent's contention that appellant forfeited her right to raise the issue on appeal. "[A] reviewing court ordinarily will not consider a challenge to a ruling if an objection could have been but was not made in the trial court." (*In re S.B.* (2004) 32 Cal.4th 1287, 1293, citing *People v. Saunders* (1993) 5 Cal.4th 580, 589-590.) However, questions of sufficiency of the evidence are not subject to forfeiture. (*People v. Rodriguez* (1998) 17 Cal.4th 253, 262 [defendant waives a sufficiency of evidence argument only by failing to file timely notice of appeal].)

When the sufficiency of the evidence to support a finding or order is challenged on appeal, even where the standard of proof in the trial court is clear and convincing evidence, the

reviewing court must determine if there is any substantial evidence--that is, evidence which is reasonable, credible and of solid value--to support the conclusion of the trier of fact. (*In re Angelia P.* (1981) 28 Cal.3d 908, 924; *In re Jason L.* (1990) 222 Cal.App.3d 1206, 1214.) In making this determination we recognize that all conflicts are to be resolved in favor of the prevailing party and that issues of fact and credibility are questions for the trier of fact. (*In re Jason L., supra*, 222 Cal.App.3d at p. 1214; *In re Steve W.* (1990) 217 Cal.App.3d 10, 16.) The reviewing court may not reweigh the evidence when assessing the sufficiency of the evidence. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319.)

Appellant first takes issue with the reunification services offered to her by contending that she "did not receive reasonable services to deal with her son's gender identity and other psychological issues." The record reflects otherwise.

"[T]he focus of reunification services is to remedy those problems which led to the removal of the children." (*In re Michael S.* (1987) 188 Cal.App.3d 1448, 1464.) Here, the circumstances that led to the minor's dependency were appellant's inability to "'assume custody of the child'" and to "'manage the child's behaviors'" once the minor was released from Heritage Oaks Hospital.

While the minor's gender identity disorder clearly played a role in his behavioral problems, it was by no means the sole reason for his dependency. Appellant's apparent lack of

awareness and understanding of the extent of her son's problems, and her inability to appropriately manage his behavior, contributed greatly to the problem. It is well-documented in the record that the minor's interactions with appellant (both in person and by telephone) were often the impetus for the minor acting out in a negative manner (e.g., urinating on walls and items belonging to others, stealing food, walking around naked and acting inappropriately toward staff and other residents). Lack of a stable, long-term living environment also played a primary role in the difficulties experienced by the minor, as did appellant's lack of employment.

According to the June 1, 2005, report prepared by appellant's therapist, appellant's four months of counseling focused on developing skills to deal with depression, build self-esteem, learn coping mechanisms, and manage stress. It does not appear, from the record, that appellant raised specific concerns regarding her son's gender identity issues during her counseling sessions, nor did she complain to anyone that she was not getting the assistance she wanted in that regard until the permanency hearing in January 2006, when she complained that the issue of "the parent/child conflict thing" had not been resolved and that she wanted counseling to be provided by someone not affiliated with her son's group home.

The social worker must make a "good faith effort" to provide reasonable services responding to the unique needs of

each family. (*In re Kristin W.* (1990) 222 Cal.App.3d 234, 254; *In re Dino E.* (1992) 6 Cal.App.4th 1768, 1777.) The question is not whether more or better services could have been provided, but "whether the services were reasonable under the circumstances." (*In re Misako R.* (1991) 2 Cal.App.4th 538, 547.) It is evident, from the record, that DHHS was making significant efforts to identify and retain an expert in adolescent gender identity issues. In the meantime, appellant utilized the counseling services provided to her to increase her parenting skills, learn effective coping skills and help her deal with issues related to depression--the very issues that led to the dependency of the minor. Certainly, she had ample opportunity during her counseling sessions to express her desire to learn how to better handle her son's gender identity issues as well. In any event, there is substantial evidence in the record that the counseling services provided to appellant addressed the general issues that led to her son's dependency, and we find those services to be reasonable under the circumstances.

Appellant also contends that she "did not receive enough conjoint family counseling with her son," and "did not receive reasonable services in the area of parenting classes." We disagree on both counts.

Conjoint counseling sessions were scheduled, yet appellant failed to show up for those appointments and refused offers to assist her with the cost of transportation. It is also worth noting that appellant's psychological evaluator concluded

that conjoint counseling was not appropriate unless and until appellant was able to demonstrate a better understanding and awareness of her son's problems, and secure and maintain suitable housing and employment to support her son. None of those things occurred. We find that appellant was given a reasonable opportunity to participate in conjoint counseling, but failed to avail herself of that opportunity.

With respect to parenting classes, appellant completed the parenting course offered to her, improving her score and demonstrating an "adequate level of knowledge of basic parenting and child abuse issues." Her testimony confirmed that she had learned new things that might be useful in parenting her son. While she may have preferred parenting classes "that were a little more intense," the standard is not "whether the services provided were the best that might be provided in an ideal world, but whether the services were reasonable under the circumstances." (*In re Misako R.*, *supra*, 2 Cal.App.4th at p. 547.) We find the parenting classes provided to appellant were reasonable.

#### **DISPOSITION**

The order of the juvenile court is affirmed.

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DAVIS, Acting P.J.

We concur:

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HULL, J.

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CANTIL-SAKAUYE, J.